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### REMARKS

Claims 168-185 are pending. Claims 183-185 have been amended. No new matter was added to the claims. Support for the amendments can be found throughout the specification, for example at p. 21, lines 8-10.

All pending claims stand rejected. The Examiner also notes that claims 168-185 are distinguished over the prior art of record.

All of the above changes are cosmetic and none raise any issue of patentability. Both before and after the above changes, the invention was described in full, clear, concise, and exact terms and met all conditions for patentability under 35 USC 101 *et seq.* The scope of the claims of any resulting patent (and any and all limitations in any of said claims) shall not under any circumstances be limited to their literal terms, but are intended to embrace all equivalents. Accordingly, under no circumstances whatsoever may these claims be interpreted as:

- having been altered in any way for any reason related to patentability;
- having been narrowed;
- a concession that the invention as patented does not reach as far as the original, unamended claim;
- a surrender of any subject matter as a condition of receiving a patent; and/or, estopping applicants from asserting infringement against every equivalent, whether now known or later developed, foreseen or unforeseen;

Applicants also emphasize that the decision to address the Examiner's suggestions via claim amendment with the understandings set forth above is not in any way intended to avoid the "gatekeeping" role of the PTO with regard to the examination and issuance of valid patents for patentable inventions.

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## **I. ELECTION**

The Examiner acknowledges Applicants election with traverse of the species of Formula I wherein MH is araC; Z, W, and W' are hydrogen; and V is 4-pyridyl. The Examiner also notes that the full scope of claims 168-185 have been examined.

## **II. STATUTORY DOUBLE PATENTING**

The Examiner has rejected claims 168 and 180-185 under 35 U.S.C. § 101 as claiming the same invention as that of claims 95 and 168-173 of U.S. Patent No. 6,312,662.

The Applicants respectfully traverse this rejection.

Claims 95 and 168-173 of U.S. Patent No. 6,312,662 are compound claims, while the current claims are all pharmaceutical composition claims. It is also noted that the current claims require an additional limitation, "a pharmaceutically acceptable excipient." Therefore, claims 168 and 180-185 of the current application do not claim the same invention as claimed in claims 95 and 168-173 of U.S. Patent No. 6,312,662.

In view of the above, the Applicants respectfully request that the Examiner withdraw the statutory double patenting rejection.

## **III. OBVIOUSNESS TYPE DOUBLE PATENTING**

The Examiner has rejected claims 168-179 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 95-130 of U.S. Patent No. 6,312,662.

The Applicants are filing a properly executed terminal disclaimer along with this communication. As such, the Applicants respectfully request withdrawal of the double patenting rejection.

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#### IV. 35 USC § 112 REJECTIONS, SECOND PARAGRAPH

##### A. *Claims 169-173 and 177-179*

The Examiner has rejected claims 169-173 and 177-179 under 35 USC § 112, second paragraph as indefinite. The Examiner finds that the claims are ambiguous because "Applicant refers to the variable MH in Formula I, but there is no variable MH in Formula I. However, there is a variable M attached to the phosphorus in Formula A. Did the Applicant intend MH to be M?" (Office Action p. 4)

The Applicants respectfully traverse this rejection.

The Applicants did intend to use the term "MH." The Applicants note that the specification at p. 21, lines 1-7 explains the relationship of M and MH:

The term "parent drug" refers to MH for phosphoramidates where M is connected to  $-P(O)(OR)(OR)$  via oxygen, sulfur, or nitrogen, and  $M-PO_3^{2-}$  when M is connected to  $-P(O)(OR)(OR)$  via carbon. For example, AZT can be thought of as a parent drug in the form of MH. In the body AZT is first phosphorylated to  $AZT-PO_3^{2-}$  and then further phosphorylated to form AZT-triphosphate, which is the biologically active form. The parent drug form MH only applies when M is attached via N, S or O. In the case of PMEAs, the parent drug form is  $M-PO_3^{2-}$ .  
(specification p. 21, lines 1-7)

MH clearly refers to the parent drug. The parent drug MH is phosphorylated to become the biologically active drug. (see specification pp. 37-38).

Given the teaching in the specification, a person of ordinary skill in the art would not find the claims ambiguous and would have no difficulty in determining the scope of the claims. Therefore, the Applicants respectfully request that the Examiner withdraw the indefiniteness rejection.

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***B. Claims 183, 184, and 185***

The Examiner has rejected claims 183, 184, and 185 under 35 USC § 112, second paragraph as indefinite. The Examiner argues that the claims are ambiguous "because the variable M in formula 1 has not been defined. In addition, M (see lines 20 and 21) has not been defined in MPO3H2 and MPO32-." (Office Action pp. 4-5)

The Examiner also notes that "the claims were examined as if M is attached to the phosphorus of Formula I via a carbon, oxygen, or nitrogen atom." (Office Action p. 5)

The Applicants respectfully traverse this rejection, as the Applicants believe that a person of ordinary skill in the art would be able to determine what M compounds are claimed by the present invention. However, in order to advance the prosecution of this application, the Applicants have amended claim 183-185 to further clarify the use of the term "M" in the claim.

In view of the above, the Applicants respectfully request that the Examiner withdraw the indefiniteness rejection.

***C. Claims 168 and 180-182***

The Examiner has rejected claims 168 and 180-182 under 35 USC § 112, second paragraph as indefinite. The Examiner contends that the claims are "confusing because of the proviso that 'V, Z, W, and W' are not all hydrogen'. In particular, the phrase is confusing because Z cannot be hydrogen (see definition of the variable Z)." (Office Action p. 5)

The Applicants respectfully traverse this rejection.

The claims in question define Z as "Z is selected from  $\dots -R^2 \dots$ " and  $R^2$  can be hydrogen. Therefore the Applicants believe that the proviso is not redundant or confusing.

In view of the above, the Applicants respectfully request that the Examiner withdraw the indefiniteness rejection.

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### CONCLUSION

In view of the foregoing remarks, it is believed that the application is in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience

Respectfully submitted,

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